COUNSEL LISTED ON SIGNATURE PAGES

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re

ACACIA MEDIA TECHNOLOGIES CORPORATION

Case No. 05 CV 01114 JW
MDL No. 1665

JOINT STATEMENT RE THE STATUS OF THE NEW YORK MDL CASES AND TRANSFER TO THIS COURT

DATE: N/A
TIME: N/A
CTRM: Hon. James Ware

Dockets.Justia.com

Pursuant to the Court's request, counsel for plaintiff, Acacia Media Technologies Corporation ("Acacia"), and counsel for defendants Time Warner Cable, Inc. ("Time Warner"), Insight Communications, Inc. ("Insight"), Bresnan Communications ("Bresnan"), and CSC Holdings, Inc. ("CSC Holdings") (hereinafter collectively "the New York defendants") hereby submit this Joint Statement regarding the status of the New York MDL Cases.

I. JOINT STATEMENT OF STATUS OF NEW YORK MDL CASES

A. The New York Lawsuits

On April 26, 2005, Acacia filed two lawsuits, one in the Southern Division of New York against Time Warner, Insight, and Bresnan, S.D.N.Y. Case No. 05-CV-4148 (LAP), and the other in the Eastern District of New York against CSC Holdings, Inc., E.D.N.Y. Case No. 05-CV-02036 TCP MLO. Each of these defendants is a cable television provider. In each of the cases, Acacia contends that each of the defendants is infringing four of the five patents in the Yurt family of patents – the '992 patent, the '275 patent, the '863 patent, and the '702 patent.

B. The Current Status of the New York Lawsuits

There has been no substantive activity in either of the New York actions. In both actions, each of the defendants filed an Answer and Counterclaims on June 13, 2005. On July 6, 2005, Acacia filed its reply to each of the counterclaims. No other activity has occurred in either of the New York actions.

The only other activity with respect to these defendants has occurred before the MDL Panel. On April 29, 2005, Acacia filed a Notice to the MDL Panel informing them of the filing of these two cases and that they are potential "tag-along" cases. On May 20, 2005, the MDL Panel issued a conditional transfer order transferring both of the cases, and all four of the defendants, to this Court to be part of this MDL proceeding. On June 6, 2005, defendants Time Warner, Bresnan, and CSC filed a notice of motion to vacate the conditional transfer order. Defendant Insight did not oppose the conditional transfer order.

On October 20, 2005, the MDL Panel issued its order denying defendants' motion to vacate the conditional transfer order and ordering the two New York actions transferred to this Court to be part of this MDL proceeding. Neither of the New York courts has issued its transfer order and therefore formal transfer of these cases to the Northern District of California has not yet occurred.

II. JOINT STATEMENT REGARDING MDL PROCEEDINGS

Counsel for the parties have met and conferred on a number of occasions to discuss their respective proposals for how the Court should deal with the New York cases. The parties may be able to reach an agreement as to how the Court should deal with the New York cases, however, counsel for the parties require additional time, until Friday, November 18, 2005, to discuss the such an agreement and alternative proposals amongst themselves and with their clients before they will be able to report to the Court.

The parties therefore respectfully request that the Court permit the parties to provide a Joint Report by Friday, November 18, 2005 setting forth an agreement or setting forth their respective positions as to how the Court should deal with the New York cases.

DATED: November 14, 2005

HENNIGAN BENNETT & DORMAN LLP

By /s/ Alan P. Block
Roderick G. Dorman
Alan P. Block
Kevin I. Shenkman
Attorney for Plaintiff
ACACIA MEDIA TECHNOLOGIES CORPORATION

Dated: November 14, 2005

BENJAMIN HERSHKOWITZ
GOODWIN PROCTOR LLP
599 Lexington Avenue
New York, NY 10022

By /s/ Benjamin Hershkowitz/ by authorization
Benjamin Hershkowitz
Attorneys for Defendant
CSC HOLDINGS, INC.

Dated: November 14, 2005

DAVID S. BENYACAR
DANIEL REISNER
KAYE SCHOLAR LLP
425 Park Avenue
New York, New York 10022

By /s/ David A. Benyacar/by authoritization
David S. Benyacar
Attorneys for Defendant
TIME WARNER CABLE, INC.

Dated: November 14, 2005

DARALYN J. DURIE (CA SBN 169825)
DAVID J. SILBERT (CA SBN 173128)
KEKER & VAN NEST LLP
710 Sansome Street
San Francisco, California 94111-1704

By /s/ David Silbert/by authorization
David Silbert
Attorneys for Defendant
INSIGHT COMMUNICATIONS, INC.

DATED: November 14, 2005

MITCHELL D. LUKIN
BAKER BOTTS LLP
One Shell Plaza
910 Louisiana
Houston, Texas 77022

JEFFREY D. SULLIVAN
MICHAEL J. MCNAMARA
BAKER BOTTS LLP
30 Rockefeller Plaza
New York, New York 10112

By /s/ Mitchell D. Lukin/by authorization
Mitchell D. Lukin
Attorneys for Defendant
BRESNAN COMMUNICATIONS

PROOF OF SERVICE-UNITED STATES DISTRICT COURT

STATE OF CALIFORNIA,)
) SS.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017.

On **November 14, 2005**, I served a copy of the within document(s) described as **JOINT STATEMENT RE THE STATUS OF THE NEW YORK MDL CASES AND TRANSFER TO THIS COURT** by transmitting via United States District Court for the Central District of California Electronic Case Filing Program the document(s) listed above by uploading the electronic files for each of the above listed document(s) on this date, addressed as set forth on the attached Service List.

The above-described document was also transmitted to the parties indicated below, by Federal Express only.

Chambers of the Honorable James Ware
Attn: Regarding Acacia Litigation
280 South First Street
San Jose, CA 95113
3 copies

I am readily familiar with Hennigan, Bennett & Dorman LLP's practice in its Los Angeles office for the collection and processing of federal express with Federal Express.

Executed on **November 14, 2005**, at Los Angeles, California.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Sylvia A. Berson
Sylvia A. Berson

SERVICE LIST

Juanita R. Brooks
Todd G. Miller
Fish & Richardson
12390 El Camino Real
San Diego, California 92130-2081
Counsel for:
ACMP LLC;Ademia Multimedia LLC; Adult Entertainment Broadcast Network; Adult Revenue Services; Audio Communications; CJ Inc.; Club Jenna Inc.; Cyber Trend Inc.; Cybernet Ventures Inc.; Game Link Inc.; Global AVS Inc.; Innovative Ideas International; Lightspeedcash; National A-1 Advertising Inc.; New Destiny Internet Group LLC; VS Media Inc.

Jonathan E. Singer
William R. Woodford
Fish & Richardson
60 South Sixth Street, Suite 3300
Minneapolis, Minnesota 55402
Counsel for:
ACMP LLC;Ademia Multimedia LLC; Adult Entertainment Broadcast Network; Adult Revenue Services; Audio Communications; CJ Inc.; Club Jenna Inc.; Cyber Trend Inc.; Cybernet Ventures Inc.; Game Link Inc.; Global AVS Inc.; Innovative Ideas International; Lightspeedcash; National A-1 Advertising Inc.; New Destiny Internet Group LLC; VS Media Inc.

Victor De Gyarfas
William J. Robinson
Foley & Lardner
2029 Century Park E, 35th Floor
Los Angeles, California 90067
Counsel for:
International Web Innovations, Inc.

Gary A. Hecker
James Michael Slominski
Hecker Law Group
1925 Century Park East, Suite 2300
Los Angeles, California 90067
Counsel for:
Offendale Commercial Limited BV

Mark D. Schneider
Gifford, Krass, Groh, Sprinkle, Anderson and Citkowski
280 N. Old Woodward Avenue, Suite 400
Birmingham, Michigan 48009-5394
Counsel for:
Askcs.com Inc.

Alfredo A. Bismonte
Daniel H. Fingerman
Bobby T. Shih
Mount & Stoelker, P.C.
River Park Tower, 17th Floor
333 W. San Carlos St.
San Jose, CA 95110
Counsel for:
Askcs.com Inc.

Adam Robert Alper
David Allen York
Latham & Watkins
135 Commonwealth Drive
Menlo Park, California 94025
Counsel for:
AP Net Marketing Inc.; ICS Inc.

Rachel Krevans
Jason A. Crotty
Paul A. Friedman
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482
Counsel for:
Satellite LLC; Echostar Technologies Corporation; Echostar Communications Corporation

David C. Doyle
Morrison & Foerster LLP
3811 Valley Centre Dr., Suite 500
San Diego, California 92130
Counsel for:
Echostar Technologies Corporation

Annemarie A. Daley
Stephen P. Safranski
Robins Kaplan Miller & Ciresi LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402
Counsel for:
Coxcom, Inc.; Hospitality Network, Inc.

Richard R. Patch
J. Timothy Nardell
Coblentz, Patch, Duffy & Bass LLP
One Ferry Building, Suite 200
San Francisco, California 94111-4213
Counsel for:
Coxcom, Inc.; Hospitality Network, Inc.

Jeffrey H. Dean
Kevin D. Hogg
Bradford P. Lyerla
Carl E. Myers
Marshall Gerstein & Borun LLP
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
Counsel for:
Armstrong Group; Arvig Communication Systems; Charter Communications, Inc.; East Cleveland TV and Communications LLC; Massillon Cable TV, Inc.; Wide Open West LLC

William R. Overend
Morgan D. Tovey
Reed Smith Crosby Heafey
Two Embarcadero Center, Suite 2000
San Francisco, California 94111
Counsel for:
Charter Communications, Inc.

Daralyn J. Durie
Joshua H. Lerner
David J. Silbert
Keker & Van Nest LLP
710 Sansome Street
San Francisco, California 94111
Counsel for:
Comcast Cable Communications, LLC; Insight Communications, Inc.

Victor G. Savikas
Kevin G. McBride
Maria K. Nelson
Marsha E. Mullin
Jones Day
555 South Flower Street, 50th Floor
Los Angeles, California 90071
Counsel for:
DirecTV Group, Inc.

Stephen E. Taylor
Jan J. Klohonatz
Taylor & Co. Law Offices, Inc.
One Ferry Building, Suite 355
San Francisco, California 94111
Counsel for:
Mediacom Communications Corporation

Mitchell D. Lukin
Baker Botts L.L.P.
One Shell Plaza
910 Louisiana
Houston, Texas 77022
Counsel for:
Mediacom Communications Corporation; Bresnan Communications

Jeffrey D. Sullivan
Michael J. McNamara
Baker Botts L.L.P.
30 Rockefeller Plaza
New York, New York 10112
Counsel for:
Mediacom Communications Corporation; Bresnan Communications

Rebecca Anne Bortolotti
John Christopher Reich
Albert L. Underhill
Merchant & Gould
80 S. 8th Street, Suite 3200
Minneapolis, Minnesota 55402
Counsel for:
Arvig Communications Systems; Cannon Valley Communications, Inc.; Loretel Cablevision; Mid-Continent Media, Inc.; Savage Communications, Inc.; Sjoberg's Cablevision, Inc.; US Cable Holdings LP

Sean David Garrison
Robert Francis Copple
Lewis & Roca LLP
40 N. Central Avenue
Phoenix, Arizona 85004-4429
Counsel for:
Cable America Corp.

C. Mark Kittredge
Perkins Coie Brown & Bain PA
P.O. Box 400
Phoenix, Arizona 85001-0400
Counsel for:
Cable One Inc.

Troy Blinn Forderman
George Chun Chen
Bryan Cave LLP
2 N. Central Avenue, Suite 2200
Phoenix, Arizona 85004-4406
Counsel for:
Cable System Service Inc.

Gregory T. Spalj
Fabyanske Westra & Hart PA
800 LaSalle Avenue, Suite 1900
Minneapolis, Minnesota 55402
Counsel for:
Cable System Service, Inc.

Patrick J. Whalen
Spencer Fan Britt & Brown LLP
1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106
Counsel for:
NPG Cable Inc.

Fritz Byers
824 Spitzer Bulding
520 Madison Avenue
Toledo, Ohio 43604
Counsel for:
Block Communications, Inc.

Clay K. Keller
Buckingham, Doolittle & Burroughs
50 South Main Street
Akron, Ohio 44308
Counsel for:
Nelsonville TV Cable, Inc.

Melissa G. Ferrario
Barry S. Goldsmith
Gary H. Nunes
Womble Carlyle Sandridge & Rice
8065 Leesburg Pike, Fourth Floor
Tysons Corner, VA 22182
Counsel for:
Nelsonville TV Cable, Inc.

Christopher B. Fagan
Fay Sharpe Fagan Minnich & McKee
1100 Superior Avenue, Seventh Floor
Cleveland, Ohio 44114-2518
Counsel for:
Armstrong Group; East Cleveland TV and Communications LLC; Massillon Cable TV, Inc.; Wide Open West, LLC

Stephen S. Korniczky
James V. Fazio
Paul Hastings Janofsky & Walker LLP
3579 Valley Centre Drive
San Diego, CA 92130
Counsel for:
Cebridge Connections

Benjamin Hershkowitz
Goodwin Proctor LLP
599 Lexington Avenue
New York, NY 10022
Counsel for:
CSC Holdings, Inc.

David S. Benyacar
Daniel Reisner
Kaye Scholar LLP
425 Park Avenue
New York, NY 10022
Counsel for:
Time Warner Cable, Inc.

HENNIGAN, BENNETT & DORMAN LLP
LAWYERS
LOS ANGELES, CALIFORNIA